

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

In re

CUSTOMS AND TAX ADMINISTRATION OF
THE KINGDOM OF DENMARK
(SKATTEFORVALTNINGEN) TAX REFUND
SCHEME LITIGATION

Master Docket 18-md-02865 (LAK)

This document relates to: All Cases

**CONSOLIDATED DEFENDANTS' JOINT STATEMENT AND RESERVATION OF
RIGHTS REGARDING PLAINTIFF'S MOTION TO AMEND ITS COMPLAINTS**

Defendants in each of the individual cases brought by plaintiff Skatteforvaltningen ("SKAT") (collectively, the "Consolidated Defendants")¹, by and through undersigned counsel, submit this statement in response to Plaintiff's Motion for Leave to Amend Its Complaints (Dkt. No. 294). Specifically, the Consolidated Defendants state as follows:

- 1) Beginning in May 2018, SKAT filed complaints against certain defendants (the "May 2018 Defendants").
- 2) On February 26, 2019, SKAT filed additional complaints against some of the defendants (the "February 2019 Defendants").
- 3) The May 2018 Defendants have completed substantial document production and started depositions, and discovery is underway for the February 2019 Defendants, who continue to produce documents.
- 4) On March 27, 2020, nearly two years after filing its first complaint, SKAT filed a motion with supporting memorandum and declaration of Marc Weinstein, with exhibits, seeking

¹ "Consolidated Defendants" refers to all defendants in the 184 consolidated actions pending before this Court in the above-captioned Multi-District Litigation.

leave of the Court to amend the complaints in all of the individual matters. *See* Dkt. Nos. 294–296.

5) Drafts of the individual amended complaints were not shared with Consolidated Defendants prior to SKAT’s motion, nor did SKAT provide amended complaints for all of the individual matters in support of its motion.²

6) Counsel for SKAT and the Consolidated Defendants reached an agreement permitting the latter to file any response to the motion by April 17, 2020, which agreement was memorialized in a stipulation and proposed order filed at Dkt. No. 313.

7) On April 13, 2020, the Court summarily granted SKAT’s motion.

8) In light of the lenient standards governing amendment of pleadings, the Consolidated Defendants would have elected not to object to the relief sought in SKAT’s motion, notwithstanding the delay, for some defendants, of nearly two years and after substantial discovery has already been completed. Accordingly, and for the avoidance of any doubt, the Consolidated

² Courts routinely deny motions to amend complaints where the movant failed to provide the proposed amended complaint. *See, e.g., Burrell-Hamilton v. Oden*, 2020 WL 1271366, at *1 (S.D.N.Y. March 16, 2020) (“[plaintiff]’s motion to amend will be denied because he has not submitted a proposed amended complaint”). The requirement that movant supply a copy of the proposed amended pleading applies equally in consolidated multidistrict litigation. *See In re Tribune Co. Fraudulent Conveyance Litig.*, 2017 WL 82391, at *20 (S.D.N.Y. Jan. 6, 2017) (Second Circuit Judge Sullivan, sitting by designation, denying request to amend in MDL where plaintiff failed to submit proposed amended complaint). This is because “it is difficult to evaluate a request to amend pleadings in the abstract.” *Separzadeh v. Iconix Brand Grp., Inc.*, 2017 WL 1330331, at *2 (S.D.N.Y. April 10, 2017). Here, SKAT only provided four sample complaints, suggesting those samples provided enough notice to the defendants of the types of new allegations and claims that SKAT intended to add to all 184 cases in this MDL. Unfortunately, that is simply not true given the different fact patterns for some of the cases, and at a minimum, SKAT should have provided more than just four samples. Under these circumstances, the Consolidated Defendants have been forced to speculate what SKAT’s new allegations will actually be. The Consolidated Defendants should not have been forced to consider SKAT’s amendments “in the abstract.” *See id.*

Defendants state for the record that they take no position on SKAT's request for relief nor regarding the sufficiency of their application therefor.

9) The Consolidated Defendants' withholding of any objection(s) is expressly limited to the relief sought in SKAT's motion, and it does not extend to any of the bases enumerated in SKAT's memorandum in support. Nothing herein should be construed as any agreement, concession, or statement by any Consolidated Defendant as to the correctness or validity of any argument in support of SKAT's motion.

10) In addition, nothing herein should be construed as any agreement, concession, or statement by any Consolidated Defendant as to the truth or relevance of any proposed amendment to any complaint. To the extent that SKAT's proposed amended complaints restate allegations to which Consolidated Defendants have previously responded, any and all of such responses are incorporated by reference and restated as if set forth herein. The Consolidated Defendants hereby reserve all rights to respond to any new allegations and to raise any and all objections, defenses and/or other challenges to any amended complaint in whatever manner is deemed appropriate, including, without limitation, via timely answer or motion to dismiss.

WHEREFORE, the Consolidated Defendants respectfully reserve all rights in connection with SKAT's motion for leave to amend its complaints and ask that the Court take such other and further action as it determines are just and proper.

Dated: April 17, 2020
New York, New York

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